

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.MC.No. 250 of 2007()

CRRP.76/2004 of I ADDL. SESSIONS COURT, PALAKKAD
CC.98/2002 of JUDL.MAGISTRATE OF FIRST CLASS COURT-III, PALAKKAD
(CRMP 5951 2004)

PETITIONER:

MUHAMMEDKUTTY, AGED 50 YEARS,
S/O. KOYAKUTTY, PAROKKODE HOUSE,
KALLADIKKODE P.O.,
MANNARKKADU TALUK.

BY ADV. SRI.K.ABDUL JAWAD
SRI.U.MUHAMMED MUSTHAFA

RESPONDENTS:

-
1. C.P. SARASU, W/O. LATE SIVANANDAN,
18/35, SIVASRUTHI,
KENATHU PARAMBA,
PALAKKAD TALUK.
 2. S. SHEEJA, D/O. SIVANANDAN,
SIVASRUTHI, KENATHU PARAMBA,
PALAKKAD TALUK.
 3. S. SHEEBA, D/O. SIVANANDAN,
SIVASRUTHI, KENATHU PARAMBA,
PALAKKAD TALUK.

BY

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 01/02/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

CRL.M.C.NO.250 OF 2007

Dated this the 1st day of February, 2007

ORDER

The petitioner is the accused in a prosecution under Sec.138 of the N.I. Act. The complainant, who initiated the prosecution, is allegedly dead. His legal heirs had filed an application to come on record to prosecute the complaint. That petition was opposed by the petitioner herein. The legal heirs had produced a death certificate as also a certificate of heirship. The petitioner raised objections before the trial court and persisted with that objection before the revisional court that the address shown in the death certificate does not exactly tally with the address of the deceased/complainant shown in the complaint. He further raised a contention that the father's name of the complainant is not shown specifically in the documents to enable the court to ascertain the identity of the person who filed the complaint and in respect of him the death certificate and heirship certificate were issued. The trial court found that the objection is without any substance

and proceeded to overrule the objection and allowed the prayer of the legal heirs to prosecute the complaint. The petitioner took up the matter in revision and by that also gained a long period of time and arrested progress of the prosecution. The court of revision rejected the contention. He has now come to this Court with this petition under Sec.482 of the Cr.P.C. reiterating the very same contentions.

2. Law on the point is very clear. When a complainant dies, any fit person can be permitted to prosecute the complaint. The legal heirs of the deceased/complainant are certainly fit persons who can be permitted to prosecute the complaint. The factual disputes next. There is no whisper of a serious contention that the complainant is not dead. Of course, an apology of a contention is raised that indirectly he has come to know that the complainant is moving around in the locality. Significantly, there is no specific assertion directly that the complainant is alive. The legal heirs have come on record. They have a certificate to show the heirship. There is nothing to assume that the death certificate and the heirship certificate cannot be acted upon to conclude that the complainant is no more and the respondents are his legal heirs.

3. This is a naked attempt to protract and delay the disposal of the case. It does not require the wisdom of Soloman to identify and see through the game.

4. This Crl.M.C. is, in these circumstances, dismissed. I am satisfied that a further direction must be issued to the learned Magistrate to take up the case for trial day-to-day and dispose of the case as expeditiously as possible – at any rate, within a period of 45 days from the date on which a copy of this order is placed before the learned Magistrate. Needless to say that the dismissal of this petition will not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions before the learned Magistrate.

5. The Registry shall forthwith communicate this order to the learned Magistrate.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge